IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1076 OF 2007

Shri Ram Janam S/o Banwari ..Applicant

Vs.

The State of Maharashtra & anr. ..Respondents

Mr. S.P. Kadam for applicant.
Mr. D.P. Adsule, APP for State.
Mr. M.S. Mohite for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : October 29, 2007.

P.C.:

1. Heard Mr. Kadam the learned counsel for the applicant who is the accused in RCC No. 961 of 2006 in his capacity as the Power of Attorney Holder of Shri Bhishma Pitamah Maniram. This application filed under Section 407 read with Section 482 of Cr.P.C. prays for transfer of RCC No. 961 of 2006 filed by the State on the complaint of added respondent no.2 Smt. Ciceillia Anthony Paul, a resident of Pune and

the said case is pending before the learned JMFC, Court No.5, Shivajinagar at Pune and it is prayed that the said case be transferred to the court of the learned Metropolitan Magistrate at Mumbai and it has been stated that the transfer application is based on the order passed by the Apex Court in Transfer Petition (Criminal) No. 301 of 2006. It is further submitted that the said transfer petition was decided by the Hon'ble Supreme Court on 6/8/2007 and the following order came to be passed:-

> ". We have heard Mr. Mukul Rohatgi, learned senior counsel for the Petitioner and Mr. Rakesh Dwivedi, learned senior counsel for the Respondent.
>
> . Having regard to the facts and circumstances of the case, we are of the opinion that the criminal case under Section 138 of the Negotiable Instruments Act pending before Chief Judicial Magistrate, Mau (U.P.), may be transferred to Mumbai. It is,

> accordingly, directed that Case No. 2003/2005, titled "Ramjanam v. Ceceilia Anthony Paul & Anr", pending in the Court of Chief Judicial Magistrate, Mau (U.P.) is transferred to the Court of Chief Metropolitan Magistrate, Mumbai who may either try it himself or assign it to any other competent Court.
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> . The transfer petition is, accordingly, allowed."

2. Mr. Kadam, learned counsel for the applicant, therefore, submitted that the pending criminal complaint i.e. C.C. No. 961 of 2006 is also in connection with the dishonoured cheque which is the subject matter in Case No. 2003 of 2005 filed before the learned Chief Judicial Magistrate at Mau (U.P.) and which has been now transferred to the court of the learned Chief Metropolitan Magistrate at Mumbai and, therefore, the pending case in the court of learned JMFC, Court No.5 at Pune ought to be transferred and

clubbed with the transferred case from Mau so as to be heard by the very same court of the learned Chief Metropolitan Magistrate or Additional Metropolitan Magistrate or the Metropolitan Magistrate and the Chief Metropolitan Magistrate may assign it to.

3. Mr. Mohite the learned counsel for the respondent no.2 has opposed this application. As per him RCC No. 961 of 2006 arises from a complaint/FIR registered on 8/4/2005 regarding the incident that had taken place on 11/3/2005 and on investigations, the police have filed the charge-sheet on 3/4/2006. There are in all 15 witnesses and all based at Pune, including the present respondent no.2 herself. He also submitted that the respondent no.2 is presently about 58 years of age and her business is looked after by her husband as a Power of Attorney, whereas her two sons are not acting in the business. Mr. Mohite also pointed out that applicant as a Power of Attorney holder of Bhishma Pitamah Maniram has filed Special Civil Suit No. 8 of 2006 as well as Criminal Case No. 32 of 2006. The applicant as the Power of Attorney

Holder of Bhishma Pithamah Maniram had approached the Apex Court in Transfer Petition (Civil) No. 102 of 2007 and Transfer Petition (Cri) No.58 of 2007 for transfer of both these proceedings i.e. Spl.Civil Suit No.8/06 and Criminal Case No. 32/06 respectively. Both these applications came to be dismissed by the Apex Court by a common order dated 19/3/2007 which reads as under:-

> "On the grounds stated in the transfer petitions, we are not inclined to allow these petitions. However, in the event the petitioner finds any difficulty for adequate reasons, in prosecuting the case at Pune, he may bring the same to the notice of the Superintendent of Police concerned, who may do the needful. The transfer petitions are dismissed."

. It was also pointed out by Mr. Mohite that by Transfer Petition (Civil) No.102 of 2007 as well as

Transfer Petition (Cri) No. 58 of 2007 the present applicant was seeking the transfer of the Special Civil Suit as well as the Criminal Complaint either to the court at Mau or to any court at Banglore and both these alternative prayers were declined by the Apex Court.

4. Both the parties have referred to the various documents like General Power of Attorney, Agreement for Sale, Indemnity Bond, Declaration-cum-Indemnity Bond and so on and so forth and while Mr. Kadam urged before this court that when the Apex Court has specifically transferred the case filed under Section 138 of the N.I. Act from the court at Mau to the Court of Metropolitan Magistrate at Mumbai, RCC No. 961 of 2006 arising from the very same cheque ought to be transferred from Pune to the court at Mumbai of competent jurisdiction, whereas, as per Mr. Mohite such a prayer cannot be entertained by this court because though the present respondent no.2 herself had approached the Apex Court in Transfer Petition (Cri) No.301 of 2006 with a prayer to transfer the complaint

pending before the Chief Judicial Magistrate at Mau (U.P.) to the court at Pune so as to be clubbed with RCC No. 961 of 2006, their Lordships of the Supreme Court have not conceded to such a requested and the case has been transferred to the court of the learned Metropolitan Magistrate at Mumbai, which itself indicates the inclination of the Apex Court against clubbing of these two cases and to be decided by the very same court. Mr. Kadam at this stage has also relied upon the decision in the case of B.R. Gupta and anr. Vs. Rohit Jain [2007 ALL MR (Cri) 2088 (S.C.)] wherein the case under Section 138 of the N.I. Act filed in New Delhi and complaint under Section 420/120-B of IPC at Bhatinda, Punjab were clubbed together and were directed to be heard and decided by the learned Metropolitan Magistrate at New Delhi.

5. Mr. Mohite has placed before me a copy of the Transfer Petition (Cri) 301 of 2006 and the prayer in the same reads as under:-

> "....this Hon'ble Court may be pleased to direct the transfer of Case No. 2003 of 2005 titled as "Ramjanam Vs. Smt. Ceceillia Anthony Paul & Anr." pending in the Court of Chief Judicial Magistrate, Mau District Mau, U.P. to the Court of Learned Judicial Magistrate First Class, Court No.5, Shivaji Nagar Court, Pune (Maharashtra)..."

. Inspite of such a specific prayer made by the present respondent no.2 before the Supreme Court, their Lordships transferred the case from Mau to Chief Metropolitan Magistrate at Mumbai who may either try the same himself or assign it to any other competent court, which means the court of Additional Chief Metropolitan Magistrate or Metropolitan Magistrate at Mumbai. Mr. Mohite, therefore, is right in his submissions that the Apex Court was not inclined to club the case pending before the Chief Judicial Magistrate at Mau with RCC No. 961 of 2006 or Criminal Case No. 32 of 2006 pending before the learned JMFC at Pune. These implied indications will

have to be, therefore, accepted and keeping in mind the difficulties expressed by the respondent no.2 that the charge-sheet had already been filed, there are in all 15 witnesses and all of them are based at Pune, will have to be taken into consideration and such a transfer is likely to cause hardship to the respondent no.2 who is otherwise a permanent resident of Pune for the last more than 25 years or so, though she is required to defend the case transferred from the court at Mau to the court of Metropolitan Magistrate at Mumbai and filed by or at the behest of the present applicant.

6. Having regards to the order passed by the Apex Court in Transfer Petition (Cri) No.301 of 2006 on 6/8/2007, I am not inclined to entertain this transfer application and, therefore, the same is hereby rejected summarily. Trial of RCC No. 961 of 2006 is hereby expedited.

(B.H. Marlapalle,J.)